IN THE HIGH COURTOF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.108 OF 1990

The State of Maharashtra ...Applicant

Vs.

Abdul Rahiman Haji Shaikh & Ors. ..Respondents

Mr.D.P.Adsule, A.P.P. for the State

Mr.Subodh Desaid h/f. Mr. A.P. Mundargi Adv. for the Respondent nos.2 to 5.

CORAM: V.M. KANADE,J.
DATED: 16TH DECEMBER, 2004

P.C.

1. The State has filed this appeal challenging the judgment and order passed by the Judicial Magistrate, First Class, Panvel on 19th October, 1989 in Regular Criminal Case No.60 of 1985. By the said judgment and order the learned Magistrate was pleased to acquit the accused for the offence punishable under Sections 147, 148, 149, 324, 326 of Indian Penal Code.

2. The prosecution case in brief is that the complainant and accused were residing in the same building. On the date of the incident the complainant had gone to offer Namaaz and when he returned back the accused threatened him that they would known down on his teeth and there after they entered the house and assaulted the complainant with

iron bars and wooden logs, when the wife of the complainant tried to intervene Basheer gave a blow on her head with a wooden log, as a result of which she fell down on the floor and became unconscious. The complainant there after lodged the police complaint and admitted his wife in the hospital. A chargesheet was filed against respondent/accused. The trial Court after having appreciated the evidence adduced by the prosecution came to the conclusion that the prosecution had not proved its case beyond reasonable doubts and therefore, acquitted all the accused of the offence with they were charged.

3. The State has preferred an appeal against the said judgment and order. The learned A.P.P.P. on behalf of the State has taken me to the judgment and order of the trial Court and also evidence of the prosecution witnesses. He submitted that there was clear and cogent evidence to effect that the wife of the complainant was assaulted by Basheer and others and that she has received a grievous injury. He submitted that this fact was corroborated by Medical evidence. He further submitted that the eye witness had clearly stated that the accused had entered the house forcibly and had assaulted the complainant and his wife. He submitted that order of the trial Court is required to be set aside and then the accused be convicted of the offences with

which they were charge.

4. Learned Counsel appearing on behalf of the respondents submitted that there is no reason to interfere in the order of the trial Court as it had considered the evidence on record and it has proper perspective and therefore, there is no reason to interfere with the findings recorded by the trial Court.

5. From the evidence of the complainant Abdul Shaikh (p.w.1), his wife Ukhi Shaih (p.w.2) Shabana Shaikh (p.w.3), Masjid Shaikh (p.w.5) it can be seen that these witnesses have given different versions about the said assault. According to prosecution the accused had assaulted the complainant and his wife with iron bar and wooden logs for about 15 to 20 minutes. All these witnesses have given different versions as to who assaulted p.w. 2. According to p.w. 5 Basheer gave a blow on the head of his mother with the wooden log on her hands and there after on her head. According to p.w. 1 Abdul all the accused gave iron blows on his person and on his wife. P.W.2 has stated that she was assaulted by Basheer Shaikh and Umar Shaikh. So far as the medical evidence is concerned the complainant was not examined by a Doctor and there is no medical certificate produced on record. So far as p.w. 2 is concerned she has received injuries on her left

ulna and there was a fracture and clotting of blood in ear. The Doctor however, has stated that this is possible if there is a fall from a hight of 3 to 4 feet. In my view there is obviously some discrepancies in the ocular evidence and medical evidence adduced by the prosecution. No injuries have been found on the complainant, though according to all the witnesses he was assaulted by iron rods and wooden logs by all the accused. Though there is an injury on the head of p.w. 2 this evidence does not correspond to the number of blows which are allegedly given by all the accused. Thus it is difficult to accept the prosecution case and benefit of doubt has been rightly given by the trial Court to the accused. Admittedly there is dispute between the two parties and civil suit was filed by the complainant against the respondents for partition and the relations between the two parties were strain on account of the partition. The trial Court has rightly appreciated the evidence, I do not find any reason to interfere in the judgment and order passed by the trial Court. The appeal is accordingly dismissed.

. C.C. expedited.

JUDGE